

REMARKS

Claims 25-36 are presently pending and under examination. Claims 26-28 have been amended. New claims 37-56 have been added. Support for the amendment and new claims can be found throughout the specification and the claims as filed. In particular, support for new claims 37-39 can be found, for example, in pending claim 31, from which they depend and which merely separately claims members of the Markush group recited in claim 31. Support for new claims 41-55 can be found, for example, in pending claims 25-36. Support for new claims 40 and 56 can be found, for example, on page 7, line 1. No new matter is added by the amendment and new claims, and entry thereof is respectfully requested. Entry of the proposed amendments is respectfully submitted to be proper because the amendments are believed to place the claims in condition for allowance.

Regarding the Information Disclosure Statement

Applicants appreciate the indication by Examiner Borin that the references cited on the Information Disclosure Statement filed October 31, 2008, have been considered. The Office Action indicates that citations with strikethrough are not in proper format as missing a publication year or part of a citation. Applicants point out that the copy of the Information Disclosure Statement provided with the Office Action had no strikethrough, but the IDS on PAIR indicates that references 4, 10, 21, 24, 46 and 50 had strikethrough. As requested by the Examiner, submitted herewith is a replacement version of the form 1449 listing the references as previously submitted October 31, 2007, with complete citations for references 4, 10, 21, 24, 46 and 50.

Regarding the Objection to the Claims

The objection to claims 26 and 27 as allegedly being of improper dependent form is respectfully traversed. Applicants respectfully submit that the objection to claims 26 and 27 has been rendered moot by the amendment of these claims to delete the phrase “comprises the amino

acid sequence.” Accordingly, Applicants respectfully request that the objection to claims 26 and 27 be withdrawn.

Regarding new claims 37-56, Applicants bring to the Examiner’s attention that new claims 42 and 43 are identical to previously pending claims 26 and 27, respectively. New independent claim 41 provides antecedent basis for claims 42 and 43 (formerly 26 and 27, respectively). New claims 44-55 parallel claims 28-36.

Regarding Obviousness-type Double Patenting

The rejection of claims 25-29, 35 and 36 under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over claims 1-3 and 6-8 of U.S. Patent No. 6,063,758 is respectfully traversed. The rejection of claims 25-28 and 30-34 under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over claims 4, 5 and 9 of U.S. Patent No. 6,063,758 is respectfully traversed. Applicants submit herewith a duly-executed terminal disclaimer over Patent No. 6,063,758, which includes a Statement under 3.73(b), as well as copies of the Assignments referenced therein. Applicants respectfully submit that the double patenting rejection has been rendered moot by the filing of the terminal disclaimer. As stated by the Court of Appeals for the Federal Circuit, the "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection," *Quad Environment Technologies Corp. v. Union Sanitary District*, 20 USPQ2d 1392 (Fed. Cir. 1991). Thus, Applicants request that the double patenting rejection be withdrawn.

In light of the remarks herein, Applicants submit that the claims are now in condition for allowance and respectfully request a notice to this effect. The Examiner is invited to call the undersigned if there are any questions.

10/813,856

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Respectfully submitted,

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